

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

KENNETH RAGLAND,

Plaintiff,

v.

Case No. 08-2379-EFM

UNIVERSITY OF KANSAS
HOSPITAL, et al.,

Defendants.

ORDER

This matter comes before the Court on Plaintiff's Motion for Refund of Filing Fee (doc. 21). Plaintiff instituted this pro se lawsuit against University of Kansas Hospital and Medical School, Kelly Hewins in her capacity as an employee of the University of Kansas Hospital, and Julie Mack in her capacity as an employee of the University of Kansas Hospital-Medical School ("Defendants") alleging damages for violations of the Uniformed Services Employment and Reemployment Rights Act ("USERRA").¹ The Court dismissed the lawsuit for lack of subject matter jurisdiction on November 11, 2008 (doc. 20).

Plaintiff now seeks reimbursement of the \$350 filing fee he paid on August 18, 2008 to commence this action. He urges the court to consider his status as an Iraq war veteran of limited means, which he alleges is the result of Defendants' violations of USERRA. Plaintiff argues that the dismissal results in his being saddled with additional court fees and prays for a refund to help pay his filing fee toward those expenses. Finally he argues that, since his case was dismissed relatively quickly, his lawsuit did not burden the court.

¹38 U.S.C. § 4301 *et seq.*

Congress enacted USERRA to “prohibit discrimination against persons because of their service in the uniformed services.”² The statute is therefore liberally construed in favor of veterans who seek its protections.³ In an action enforcing rights with respect to a state or private employer, under 28 U.S.C. § 4323(h)(1), “no fees or court costs may be charged or taxed against any person claiming rights under this chapter.” The phrase “fees or court costs” has been interpreted to include normal litigation costs such as filing fees.⁴

Plaintiff alleges that, as a U. S. Navy Petty Officer and veteran of the Iraq War, he seeks the protections of USERRA. The Court finds no opposition to this allegation. It finds Plaintiff entitled to a refund of his filing fee. That the Court dismissed his lawsuit does not affect his rights under the statute. USERRA is “broadly written and forbids charging *any* fees and court costs, not just those awarded to a successful opponent. It says nothing about prevailing defendants or losing plaintiffs at all.”⁵ Plaintiff is entitled to a refund of the filing fee.

IT IS THEREFORE ORDERED THAT Plaintiff’s Motion for Refund of Filing Fee (doc. 21) is granted. The Clerk of this Court is directed to refund to Plaintiff the filing fee of \$350.

Dated in Kansas City, Kansas on this 4th day of February, 2009.

s/ Gerald L. Rushfelt
Gerald L. Rushfelt
United States Magistrate Judge

² 38 U.S.C. § 4301(a)(3).

³ *Davis v. Advocate Health Ctr. Patient Care Express*, 523 F.3d 681, 683-84 (7th Cir. 2008) (citing *McGuire v. United Parcel Serv.*, 152 F.3d 673, 676 (7th Cir. 1998)).

⁴ *Davis*, 523 F.3d at 684.

⁵ *Id.* (Emphasis in original. Citation omitted.)